

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 13 November 2009 has been entered.

Response to Amendment

2. The amendment filed on 13 November 2009 does not place the Application in condition for allowance.

Status of Rejections Pending Since the Office Action of 27 August 2009

3. The provisional obviousness-type double patenting rejections over US Patent Application Nos. 11/280,379, 10/723,456, 11/247,828 and 11/614,332 are maintained.

4. All other rejections are withdrawn due to Applicant's amendment.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 112-114 and 122-126 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is insufficient antecedent basis for "the substrate" as recited at line 13 of claim 112. It is suggested that the words "a substrate;" be inserted before the words "an integral semiconductor body" in line 2 of the claim and that the words "deposited on said substrate," be inserted after the word "material" in line 2 of the claim, in order to address this indefiniteness. Claims 113 and 114 depend from claim 112 and are therefore rejected on the same grounds.

The recitation "a metal layer from the second portion of the lateral conduction layer to the substrate" in line 12 of claim 122 is unclear within the context of the claim. It is suggested that the word "from" be replaced with "is disposed between" and that the word "to" be replaced with "and" to correct this indefiniteness. Claims 123-126 depend from claim 122, and are therefore rejected on the same grounds.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 47, 69, 112-120, 122-126, 129, and 131-133 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 48-66, 68-80, and 82-98 of copending Application No. 10/723,456. Although the conflicting claims are not identical, they are not patentably distinct from each other because although not of the same scope as the instant claims, the claims of said copending application are anticipatory of the instant claims. Note that the means-plus-function language of the claims of the '456 application is to be interpreted as required under 35 U.S.C. §112, sixth paragraph, and that the corresponding disclosure of "means for passing current" in the specification of the '456 application includes the metal layer and bypass diode of the instant claims. Note also that the instant case was filed after the '456 application, and this rejection will therefore be maintained when obviousness-type double patenting rejections are the last remaining issues in the case.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 47, 69, 112-120, 122-126, 129, and 131-133 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 11/280,379. Although the conflicting claims are not identical, they are not patentably distinct from each other because note in claim 2 of said copending application wherein the sequence of layers of semiconductor material forms at least one cell of a multijunction solar cell and also forms the bypass diode. The conductive material that provides for conduction within the conductive via of the '379 application corresponds to the instant metal layer. Note that a Notice of Allowance has been sent in the '379 application, and that it will therefore be considered proper to maintain this obviousness-type double patenting rejection, even though the instant application was filed earlier, once obviousness-type double patenting rejections are the last remaining issues in the case.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 47, 69, 112-120, 122-126, 129, and 131-133 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 11/247,828. Although the conflicting claims are not identical, they are not patentably distinct from each other because note in claim 2 of said copending application wherein the sequence of layers of semiconductor material forms at least one cell of a multijunction solar cell and also forms the bypass diode having a metal layer as instantly claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 47, 69, 112-120, 122-126, 129, and 131-133 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 15-20 of copending Application No. 11/614,332. Although the conflicting claims are not identical, they are not patentably distinct from each other because note in claim 16 and 20 of said copending application wherein the sequence of layers of semiconductor material forms at least one cell of a multijunction solar cell and also forms the bypass diode having associated metal layer as claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey T. Barton whose telephone number is (571)272-1307. The examiner can normally be reached on M-F 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Basia Ridley can be reached on (571) 272-1453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey T. Barton/
Primary Examiner, Art Unit 1795
15 January 2009